

DISCUSSION

Upon entry of the present Amendment-B, claims 1-6 are pending in the application, of which, claim 1 is independent.

The above-identified Office Action has been reviewed, the references carefully considered, and the Examiner's comments carefully weighed. In view thereof, the present Amendment-B is submitted.

It is respectfully submitted that by the present Amendment-B, all bases of rejection set forth in the Office Action have been traversed and overcome. Accordingly, reconsideration and withdrawal of each of the rejections of record is respectfully requested.

AMENDMENTS PRESENTED

In the claims: Claim 3 has been amended to provide proper antecedent basis for the claimed hex fitting.

Claim 4 has been amended to overcome the objection to the drawings for failing to show a vehicle. The language of the original claims has been adopted for use in claim 4. Accordingly, applicant submits that these amendments do not comprise a "new issue", since the original claims were not rejected/objected to, while placing the claims in better condition for appeal.

Applicant respectfully submits that the above amendments to the claims and specification, including new claims, are fully supported by the original disclosure including the drawings. Applicant also respectfully submits that no new matter is introduced into the application by amending the claims and specification, and by adding new claims, since all of the subject matter thereof was expressly or inherently disclosed in the specification, claims and drawings, as originally filed.

Drawing Objections

On page 2 of the Office Action, the Examiner objected to the drawings under 37 CFR 1.83(a) as failing to show a vehicle (claimed in claim 4).

Applicant's Response:

Upon careful consideration of the Examiner's objection and in light of the above amendments to the claims, applicant respectfully submits that the objection is overcome. Specifically, applicant submits that claim 4 has been amended to specify that the claimed combination further comprises left and right side frames which are adapted to be positioned and fixed on-board in a a [[the]] vehicle. Applicant respectfully suggests that this amendment to claim 4 overcomes the Examiner's objection to the drawings.

Accordingly, applicant respectfully requests reconsideration and withdrawal of the objection to the drawings, in light of the present amendment.

CLAIM REJECTIONS -- 35 USC 112

1. In the Office Action the Examiner has rejected claims 3 and 6 under 35 USC 112, first and second paragraph. Specifically, the Examiner has taken the position that claim 6 is rejected under 35 USC 112, first paragraph, for failing to comply with the enablement requirement because in the Examiner's view, the claimed subject matter was not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention; the claim states that the pin hole would not have an inlet or outlet for gases and the specification does not adequately teach this concept nor define that it has a smooth inner surface.
2. In the Office Action the Examiner has rejected claims 3 and 6 under 35 USC 112 second paragraph, for failing to distinctly claim the subject matter that applicant regards as the

invention. Specifically, the Examiner states that there is insufficient antecedent basis for the hex fitting in claim 3 and that claim 6 is indefinite since it is unclear how the pin hole does not have an inlet or outlet.

Applicant's Response:

1. As stated above, applicant has amended claim 3 herein. Upon careful consideration of the Examiner's rejection and in light of the above rejection, applicant respectfully traverses such rejection and submits that the rejection is overcome.

Specifically, applicant notes that several paragraphs (20,21,22,23) of the specification and the original drawings show the end opposite the valve as being closed with a pin hole for guiding the tank into the rack of the present invention. See paragraph 3 of the publication for the disclosure of the problem and the proposed solution, a means and method for locating and securing the tank. Figure 8 specifically shows the pin 34 and pin hole 12 relationship with the end of the tank closed at the inner shell 9 by the mounting flange 14. See paragraph 22 and 23 of the publication. In addition, paragraph 20 of the publication states that a gas fuel inlet and outlet valve device 11 is located at a first axial end of the tank 9 and has a pin hole 12 at the OTHER AXIAL END of the tank 9, the pin hole opens OUTWARDLY. The original claim 1 states that the pin hole opens outwardly. In addition, paragraph 23 clearly states that the body 10 is provided ON the inner shell 9 and does not protrude from the outer shell. Paragraph 22 states that the valve device 11 is provided at a neck portion of the inner shell 9 with the pin hole 12 OPENED AT ONE END FACE and a mounting flange 14 at the other end of the cylindrical body 13. With respect to the smooth inner surface, it is respectfully submitted that the original drawings show the inner surface of the cylinder 13 as being smooth.

Moreover, applicant respectfully submits that the courts have described the essential question to be addressed in a description requirement issue in a variety of ways. According to the courts, an objective standard for determining compliance with the written description requirement is, "does the description clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed." *In re Gosteli*, 872 F.2d 1008, 1012, 10 USPQ2d 1614, 1618 (Fed. Cir. 1989). Further, under *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991), to satisfy the written description requirement, an applicant must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention, and that the invention, in that context, is whatever is now claimed. The test for sufficiency of support in a parent application is whether the disclosure of the application relied upon "reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter." *Ralston Purina Co. v. Far-Mar-Co., Inc.*, 772 F.2d 1570, 1575, 227 USPQ 177, 179 (Fed. Cir. 1985) (quoting *In re Kaslow*, 707 F.2d 1366, 1375, 217 USPQ 1089, 1096 (Fed. Cir. 1983)).

Additionally, it is respectfully noted that in establishing a disclosure, applicant may rely not only on the specification and drawing as filed but also on the original claims if their content justifies it. See **MPEP § 608.01(I)**.

Accordingly, in view of the arguments presented above, applicant respectfully submits that the original specification and drawings fully support the claimed subject matter and thus, applicant respectfully requests the rejection under 35 USC 112, first paragraph be reconsidered and withdrawn.

2. As stated above, applicant has amended claim 3 herein. Upon careful consideration of the Examiner's rejection and in light of above amendment to claim 3, applicant respectfully

traverses such rejection and submits that the rejection is overcome. Specifically, applicant submits that claim 3 has been amended to provide proper antecedent basis for the hex fitting and accordingly, claim 6 has not been amended by the present amendment. Applicant respectfully submits that the arguments presented above regarding the original specification and drawings and the 35 USC 112, first paragraph rejection, that the rejection of claim 6 is overcome.

Accordingly, in view of the arguments presented above, applicant respectfully requests the rejection under 35 USC 112, second paragraph be reconsidered and withdrawn.

35 USC 103 -- OBVIOUSNESS

1. In the Office Action the Examiner has rejected claims 1, 4 and 5 under 35 USC 103 as being unpatentable over Watanabe et al in view of Takashima. The Examiner has taken the position that Watanabe et al discloses a tank, a support frame for holding the tank horizontally, and an outlet valve and that Takashima is provided to show that it is well known to provide openings at either end of the tank and to provide a tank with wound fibers for strength. Thus, in the Examiner's view, it would be obvious to provide aligned holes on the tank of Watanabe and a wound outer shell in view of the teachings of Takashima.

2. In the Office Action the Examiner has rejected claims 2, 3 and 6 under 35 USC 103 as being unpatentable over Watanabe et al in view of Takashima and further in view of Kay. The Examiner has taken the position that it would have been obvious to modify the already modified tank of Watanabe to include a pin and pin hole formed body as taught by the pin hole 69 and pin hole body 65 further in view of Kay.

Applicant's Response:

Upon careful consideration of the Examiner's rejection and the applied references applicant respectfully traverses such rejection because the references offer no suggestion or impetus for the proposed hypothetical combination as proffered by the Examiner and further because the Examiner's rejection is based entirely on the Examiner's use of impermissible hindsight (guided by the applicant's own disclosure) rather than from any teaching that can be fairly gleaned from the references themselves.

For example, relative to the Examiner's rejection of claims 1,4 and 5, applicant respectfully submits that the present invention comprises a tank with ***only one opening*** or aperture for the passing of gas into and out of the tank and that opening includes a valve 11 as clearly set forth in the original specification. The instant invention comprises providing on the tank, a locator pin hole for quickly and easily placing the tank "on-board" in a rack. The pin hole is arranged on the tank at the axial opposite end of the valve. The pin hole 12 comprises a cylinder 13 opening outwardly with the flange 14 attached to the tank. As can best be seen in figures 3 and 4, the pin hole 12 is smooth inside and outside as opposed to the hex shaped valve opening.

Generally, applicant notes that Watanabe et al. attaches the cylinder to the support frame ***before*** placing the assembly into the vehicle and securing the frame to the floor (Column 5, Lines 55-65). Thus, there would not be a need for an alignment pin if the assembly were completed before the tank is placed "on-board" the vehicle.

Applicant notes that the reference to Takashima is not held in a rack and is non-analogous since it provides two threaded openings in a tank. Again, the present invention only has one opening and a pin hole opposite the opening. Furthermore, the prior art of record fails to

disclose the use of a pin hole on a tank to support and locate the tank on a rack as set forth in claim 1. Accordingly, applicant respectfully notes that the proposed combination of Watanabe and Takashima would result in a ***tank with two openings*** where the claimed invention is a tank with ***only one opening and a locator pin hole***. Furthermore, the prior art fails to disclose the opening and pin hole on a tank with the pin hole being flush with or sunk from the outer surface.

Additionally, applicant submits that Kay is non-analogous since it fails to show a support frame to hold the tank. The pin hole identified in the Office Action is in reality a petcock for draining water, the pin hole body is a cleanout plug and the outer shell is the bottom cap. It is respectfully submitted that Kay is non-analogous art since it does not relate to retaining a tank on a support frame in a vehicle. In addition, Kay provides two apertures in the tank; contrary to the present invention that only provides a single aperture in the tank itself. If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. ***In re Ratti***, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). It is respectfully submitted that the device of Kay could not be used and operate in a horizontal position since the water would not separate from the fuel as set forth in Kay.

Accordingly, applicant respectfully submits that the proposed combination would improperly change the principle of operation of Watanabe and make Watanabe unsatisfactory for its intended purpose of providing a high pressure tank, since the additional openings would weaken the tank, would not allow water to drain as taught by Kay since the tank is placed horizontal, and would not retain the high pressure gas since the petcock of Kay would not be adequate to retain the gas. If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation

to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Furthermore, Watanabe's cylinder 6 is very distinct from Takashima's modern pressure vessel in many respects, including the fact that Watanabe includes a single gas inlet/outlet valve 14 at only one end of the cylinder, unlike Takashima's vessel having identical domed end portions with threaded bosses at opposite ends of the vessel. Watanabe's cylinder includes a flat supporting surface on the end opposite the valve 14, unlike Takashima's vessel having identical domed end portions at opposite ends thereof. Watanabe is not concerned with manufacturing his cylinder 6 from an inner airtight liner and an outer FRP shell, unlike Takashima. Quite simply, given that Watanabe's pressurized fuel cylinder is so very structurally distinct from Kay's fuel-water liquid separation tank, and certainly has no need for a cleanout plug at a lower end thereof, persons of ordinary skill in the art would never consider the proposed modification to be obvious.

The Standard for Rejection under 35 USC 103

In order to determine obviousness as a legal matter, four factual inquiries must be made concerning: 1) the scope and content of the prior art; 2) the level of ordinary skill in the art; 3) the differences between the claimed invention and the prior art; and 4) secondary considerations of nonobviousness, which in case law is often said to include commercial success, long-felt but unresolved need, failure of others, copying, and unexpected results. *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459, 467 (US 1966); *Miles Labs v. Shandon*, 997 F.2d 870, 27 USPQ2d 1123, (Fed. Cir. 1993).

The U.S. Supreme Court has recently said that “[A] patent composed of several elements is not proved obvious merely by demonstrating that each element was, independently, known in the prior art. . . . Inventions usually rely upon building blocks long since uncovered, and claimed discoveries

almost necessarily will be combinations of what, in some sense, is already known. *KSR v. Teleflex*, 127 S. Ct. 1727, 1740-41, 82 USPQ2d 1385, 1396 (S.Ct.2007)

Applicant respectfully suggests that an Examiner must provide a convincing reason why he or she feels that it would be obvious to combine the elements of the cited references in the fashion claimed by applicant. “Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” (*In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) cited with approval in *KSR v. Teleflex*, *supra*.)

The U.S. Supreme Court has also stated that a factfinder should be aware of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning. See *Graham*, 383 U. S., at 36 (warning against a “temptation to read into the prior art the teachings of the invention in issue” and instructing courts to “guard against slipping into the use of hindsight”. *KSR v. Teleflex*, *supra*.)

Applicant respectfully submits that the Examiner has not provided a convincing or persuasive reason why it would be appropriate to combine the references in the manner suggested by the Examiner, and respectfully points out that even if the references are hypothetically combined, for the sake of argument, the combination fails to produce applicant’s invention as claimed.

Since the prior art relied upon in the Office Action fails to address the problem of aligning a tank with a support frame and providing a pin hole flush with or sunken with respect to the outer tank, it is respectfully submitted that there is no motivation for the proposed combination of references.

If an independent claim is nonobvious under **35 U.S.C. 103**, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Applicant respectfully submits that the differences between the claimed invention and the cited references are substantial and significant, and therefore, applicant's invention is non-obvious as compared to the respective teachings of the references.

CONCLUSION

Based on all of the foregoing, applicant respectfully submits that all of the rejections set forth in the Office Action have been overcome, and, as presently amended, all of the pending claims are believed to be allowable over all of the references of record, whether considered singly or in combination. Applicant respectfully requests reconsideration and withdrawal all of the rejections of record, and allowance of the pending claims.

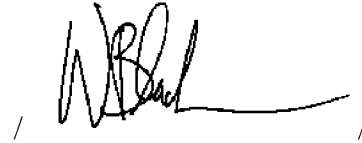
It is applicant's contention that no possible reading of the references, either singly or in any reasonable combination, can be viewed as teaching applicant's claimed invention.

If any issues remain unresolved, or if the Examiner feels that the prosecution of the present application could be advanced by a telephone discussion, the applicant respectfully requests that the Examiner telephonically contact the applicant's undersigned representative, to expeditiously resolve any such issues remaining in the prosecution of the application.

Entry of the present amendment after final under 37 CFR 1.116 is respectfully requested on the grounds that it raises no new issues for consideration by the Examiner, that it places the application in condition for allowance, and/or that it places the claims in better form for appeal.

Favorable consideration is respectfully requested.

Respectfully submitted,



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